IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/12/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No.10342 of 1998
and W.P.Nos.17235 to 17239 of 1998

W.P.No.10342/98:-

K.C.Palanisamy
Chairman,
Cheran Group,
Cheran Towers,
78-85, Arts College Road,
Coimbatore 641 018. ..... Petitioner

-Vs-

1. Appellate Authority for Industrial
and Financial Re-construction,
10th Floor, Jeevan Prakash,
25, Kasturba Gandhi Marg,
New Delhi 110 001.

2. Board for Industrial and Financial
Re-construction,
22nd Floor, Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
New Delhi 110 001.

3. Dhanalakshmi Mills Ltd.,
130, B.S.Sundaram Road,
Tiruppur 641 601.

4. C.R.Sethuramalingam

5. Industrial Investment Bank of India,
No.19, NetajiSubhash Road,
Calcutta 700 001.

6. State Bank of India,
Central Office,
Post Box No.12,
Madame Gama Road,
Bombay 400 021.

7. Industrial Development Bank of India,
IDBI Tower, Cuffe Parade,
Bombay 400 005.

8. Industrial Credit & Investment
Corporation of India,
163, Rackbay Reclamation,
Bombay 400 020.
9. Employees State Insurance Corporation,
ESIC Building, Kotla Road,
Behind Foreign Post Office,
New Delhi.

10. Central Provident Fund Commissioner,
Hudco Vishala,
14, Bhikaji Cama Place,
New Delhi 110 066.

11. Secretary to Government,
Handloom, Handicraft,
Textiles & Khadi Department,
Fort St. George, Chennai 600 009.

12. The Secretary,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 600 002.

13. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

14. Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.

15. Coimbatore Paper District Cotton
Mills Labour Union,
Regn. No.2658,
279, Kumaran Street,
Tiruppur-1.

16. Coimbatore District Cotton Mills
Employees Union (INTUC),
Dhanalakshmi Mills Branch,
C/o. Dhanalakshmi Mills Ltd.,

130, B.S.Sundaram Road,
Tiruppur-1.
17. Deputy General Manager,
I.R.B.I. (IIBI),
Southern Zonal Office,
Spenzer Plaza,
7th Floor,
Anna Salai,
Chennai 600 002.

18. Dhanalakshmi Mills Workers and
Staff Union, 197, B.S.Sundaram
Board, Tiruppur 641 601,
rep. by the Secretary,
Mr.Shanthiraj ..... Respondents

For Petitioner in all the writ petitions. :: Mr.T.R.Rajagopalan

No appearance for RR 1, 2, 6 to 9, 12, 13, 15 and 16 in W.P.No.10342/98

for RR 1 to 3, 5, 7 to 11, 13, 14, 16 and 17 in W.P.Nos.17235 to 17238 of 1998

for RR 1, 2, 5, 7 to 11, 13, 14, 16 and 17 in W.P.No.17239/98.

For Respondents 15 and 16 in W.P.10342/98 and for RR 16 and 17 in W.P. Nos.17235 to 17239 of 1998 :: Mr.K.Chandru S.C. for Mr.M.Ramamurthy

Mr.A.L.Somayaji, S.C.
for M/s.Gupta Ravi for R3 in W.P.No.10342/98 and for R4 in W.P.Nos.17235 to 17239 of 1998

Mr.M.Mahalingam G.A. for RR 11 and 14 in W.P.10242/98 and for RR 12 and 15 in W.P.Nos.17235 to 17239 of 1998

Mr.S.Murali for
Mr.Rangarajan for RR 5 and 17 in W.P.10342/98 and for RR 6 and 18 in W.P. Nos.17235 to 17239 of 1998

Mr.R.Thiagarajan, S.C.
for M/s.Gupta Ravi for R4 in W.P.No.10342 of 1998

Mr.K.Gunasekar,
C.G.S.C. for R10 in W.P.No.10342/98 and

Mr.O.Venkatachalam for R18 in W.P.No.10342/98 and
for R3 in W.P.No.17239/98.

:ORDER

The above writ petitions have been filed for issuance of writ of certiorari calling for the records relating to the common order dated 3.4.1998 passed in Appeal Nos.218, 239 to 243 of 1997 by the first respondent/AAIFR and quash the same.

2. Since the above writ petitions are filed challenging a common order, all the writ petitions are disposed of by this common order. For the purpose of convenience, the parties are arrayed in W.P.No.10342 of 1998. The facts of the case is as follows:-

The third respondent mill owned spinning mill which is referred as A mill and weaving unit as B mill. The profitability of the B mill has started deteriorating from the year 1981. On the application made by the third respondent, the Government of Tamil Nadu has referred the matter in July 1992 to the Special Industrial Tribunal. The Special Industrial Tribunal has passed its award dated 28-11-1994 for closure of B mill with the condition that the workers of the said mill should be employed in A mill. The loss sustained by B Mill had an adverse impact on the A mill, hence the third respondent mill has made a Reference under sec.15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as Act which was registered by the second respondent in case number 105/93 on 22.2.1994. The second respondent has declared the third respondent mill as sick industrial company within the meaning of section 3(1)(o) of the Act as its accumulated losses as on 30.1.1993 exceeded its net worth. The second respondent appointed the 5th respondent as operating agency under sec.17(3) of the Act. The proposals of the third respondent was considered by the second respondent, but was unacceptable. The second respondent directed the operating agency to issue an advertisement inviting offers for rehabilitation of the third respondent mill by change in management. Against the order of the second respondent, the third respondent has filed appeal before the first respondent. In the said appeal, the order of the second respondent was set aside and the second respondent was directed to examine the proposal of the third respondent for rehabilitation. A writ petition in W.P.No.12073 of 1 995 was filed by the petitioner against the order of the first respondent and this court by order dated 28.1.1997 set aside the order of the first respondent and directed the second respondent to issue necessary direction to the operating agency to call for fresh proposals after issuing necessary advertisement and submit its report and this court further directed to give opportunity to the parties who had submitted proposals earlier to submit fresh proposals or

update those proposals. The offers received were considered in the Joint Meeting on 25.6.1997 by the operating agency and it has submitted its report on 4.7.1997 to the second respondent. The second respondent has posted the case for hearing to 18.8.1997. On 18.8.1997, it was found by the second respondent that the third respondent has wrongly sent the proposal in sealed cover addressed to the Bench instead of Chairman of BIFR and it got opened in that office which was treated as procedural lapse. Hence, the second respondent was directed both the petitioner and the third respondent to re-submit their updated proposals in sealed covers to reach its office on or before 30.9.1997. The third respondent re-submitted the proposal but the petitioner has upgraded the earlier proposal dated 28.7.1997. The second respondent, without any further hearing passed order dated 29.10.1997 stating that the proposal of the petitioner is better than the proposal of the third respondent and forwarded the proposals to the operating agency to prepare a draft rehabilitation scheme (DRS) on that basis. The second respondent in its order further directed the petitioner to deposit a sum of one crore rupees within 45 days of the circulation of the scheme. Aggrieved by the said order dated 29.10.1997 passed by the second respondent, the third respondent and other Labour Unions filed appeals before the first respondent. All the appeals were disposed of by a common order dated 3.4.1998 directing the operating agency to prepare a scheme based on arranging of funds by disposing the assets of B Mill. Against the order of the first respondent, the present writ petitions have been filed by the Cheran Group.

2. Learned Senior Counsel Mr.T.R.Rajagopalan appearing for the petitioner has advanced arguments as under:-

The first respondent has exceeded its jurisdiction in framing the issues viz., (a) Is Petitioner's proposal better than that of the third respondent as concluded by the second respondent? (b) Have the petitioner and the third respondent established their resourcefulness for implementing their respective proposals? (c) What is the most viable, workable alternative for the rehabilitation of the third respondent Mills? The petitioner had no occasion to c hallenge the same; that the first respondent has erred in framing those issues only at the time of passing final order; that the second issue raised by the first respondent was certainly not arising out of the impugned order of the second respondent and therefore, the first respondent had no jurisdiction to consider the same; that the second respondent itself has directed the operating agency to verify and ensure that the means of finance in the petitioner's proposal are tied up; that the operating agency has already complied with the directions of the second respondent, examined the means of finance of the petitioner and ensured that the funds are tied up and subsequently formulated the draft rehabilitation scheme on the basis of the proposal made by the petitioner which has been duly approved by the second respondent, published and circulated in terms of the order dated 1.12.1997 which has not been challenged by the respondents as such the same has become final; that the issue that what is the most viable, workable alternative for the rehabilitation of the third respondent Mills is concerned, it is also beyond its jurisdiction and directly in conflict with the order in writ petition passed by this court; that the first respondent erred in ignoring the fact that the memorandum of understanding U/sec. 18 (1) of Industrial

Dispuetes Act signed by the petitioner with the majority mill labour unions representing about 85% of the workmen envisages lesser sacrifices of wages/salary to the extent of about 9%; that the petitioner's rehabilitation proposal is much potential when compared with the rehabilitation proposal of the third respondent; that the second respondent has rightly upheld the memorandum of understanding of the petitioner with the labour unions on 2.4.1997 and correctly incorporated the said memorandum of understanding in the draft rehabilitation scheme of the petitioner for its eventual entering into legal settlement under sec.18(1) or 12(3) of the Industrial Disputes Act at the appropriate time. The order of the first respondent setting aside the order of the second respondent is contrary to the directions given by this court in W.P.No.12073/97 dated 28.01.1997; this court, in the said writ petition has directed the operating agency to call for fresh proposals from the parties concerned, assess the same and submit the report before the second respondent; that the first respondent has erred in holding that the source of funds formulated by the petitioner is not dependable without actually assessing the evidence submitted the the petitioner in support of its proposal; that the first respondent, having found that the third respondent's proposal cannot be accepted, ought to have affirmed the order of the second respondent and approved the draft scheme as published as per pursuant to the order of the second respondent dated 1.12.1997; that the first respondent has erred in relying upon the market value as assessed by one Kandaswamy, Chartered Engineer when no material is placed before the Board to show that the price of land is Rs.3,00,00,000/= per acre; that the operating agency considered all aspects relating to rehabilitation of the sick industry and has recommended the petitioner's proposal as the best proposal for revival of the company and having regard to the fact that only other proposal given by the third respondent not being a feasible proposal, the first respondent ought to have approved the report of the operating agency and approved the scheme of the petitioner; that the first respondent has erred in observing that the interested parties were not heard and their views were not sought in regard to the latest proposals of the third respondent and the petitioner is incorrect; that in any event, the first respondent has erred in giving directions to the operating agency to prepare a revised scheme on the basis of sale of assets of B Mill.

The learned Senior Counsel appearing for the petitioner relied on the following :-

(i) RISHABH AGRO INDUSTRIES LTD. v. P.N.B. CAPITAL SERVICES LTD. ((20 00) 5 SCC 515). In that case, the respondent bank filed a petition for winding up of the appellant company, later the appellant undertook to make some payment in instalments and paid the entire principal amount, but, did not pay the instalment of interest. The respondent bank moved an application for revival of the winding up petition. A learned Single Judge of the High Court passed order for winding up and Liquidator was also appointed. The appellant then moved an application under sec.22 of the Act with the prayer for staying the order arising out of the company petition. Ultimately, a Division Bench has rejected the application on the ground that no such proceedings are pending even on the date of passing of the said order by the Division Bench in the appeal. The Honourable Supreme Court has allowed the appeal of the

company by setting aside the order of the High Court with a direction that the proceedings pending before the company Judge shall remain in abeyance till the disposal of the application/appeal before the appellate authority under the Sick Industrial Companies Act. The Honourable Supreme Court has held that the said Act has been made in public interest with a view to secure timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. It is further held that the object of the Act appears to be to afford maximum protection of employment, optimise the use of financial resources, salvaging the assets of production, realising the amounts due to the banks and to replace the existing time-consuming and inadequate machinery by efficient machinery to safeguard the economy of the country and protect viably sick units.

(ii) MAHARASHTRA TUBES LTD. v. S.I.I. CORPORATION OF MAHARASHTRA LTD. ((1993) 2 SCC 144) wherein the Honourable Apex Court has held that when enquiry is pending under sec.16 and 17 or an appeal is pending under sec.25, there should be cessation of the coercive activities of the type mentioned in sec.22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company. The Honourable Apex Court, while defining the purpose and object of the suspension of proceedings under sec.22(1) held that it is to await the outcome of the reference made to the BIFR for the revivial and rehabilitation of the sick industrial company. The Honourable Supreme Court has also given opportunity to the respondent company to seek the consent of the appellate authority under sec.25 of the Act for taking action under sec.29 of the State Financial Corporation Act, 1951.

3. Learned Senior Counsel Mr.A.L.Somayaji appearing for the third respondent advanced arguments as under:-

Pursuant to the order dated 28.1.1997 passed by this court in W.P. No.12073 of 1995, the second respondent issued advertisement inviting proposals for rehabilitation of the third respondent Mills; the operating agency has received two proposals, one from the third respondent and another from the petitioner; that the proposal submitted by the third respondent envisaged the induction of Mr.Y.Jaganatham who has considerable experience of running two sick textile mills pursuant to rehabilitation scheme sanctioned by the second respondent viz., M/s. Bhavani Mills Limited and M/s.Thiruvepathy Mills Limited as a copromoter; that the second respondent directed the parties to update their proposals and not to submit a revised proposal, but, the petitioner, after became aware of the proposal submitted by the third respondent submitted their revised proposal; that the averment that the petitioner had entered into a memorandum of understanding with majority of workers is incorrect; that the averment that the proposal of the petitioner is superior than the third respondent is also incorrect; that the order passed by the first respondent is not contrary to the order passed in W.P.No.12073 of 1995; that the first respondent has jurisdiction to consider not only legality or otherwise, but also to pass order towards rehabilitation of the third respondent company; that the allegation that issue "b" does not arise out of

the impugned order of the second respondent and that the first respondent had no jurisdiction to consider the same is unsustainable, indeed one of the major grievance of the third respondent is that the second respondent without even verifying the feasibility and the resourcefulness of the petitioner directed the operating agency to formulate a draft rehabilitation scheme; that when the petitioner could not establish its resourcefulness for implementing its proposal before the first respondent, it could have no grievance about the first respondent considering the said issue which ought to have been considered by the second respondent at the threshold; that the burden of the parties does not end with merely submitting imaginary proposal to the operating agency, it is the bounden duty of the parties to demonstrate their resourcefulness in implementing the proposal; that the second respondent could not have given such a direction to the operating agency without considering the track record of the petitioner and without verifying their resourcefulness in implementing the proposal; that the allegation of the petitioner that the operating agency having already complied with the directions of the second respondent formulated the draft rehabilitation scheme on the basis of the proposal filed by the petitioner and same has been published and circulated in terms of the order dated 1.12.1 997, the first respondent ought not have rendered any finding on the issue "b" is unsustainable; that the conclusion reached by the first respondent on the issue "b" would clearly show that the operating agency and the second respondent have not approached the issues in the proper perspective and justified the allegation of the existing promoters and the fourth respondent; that when the proceedings are at large before the first respondent, it was always open to the first respondent to independently examine the proposals and come to a conclusion; that the allegation that issue "c" framed by the first respondent is completely beyond its jurisdiction and conflict with the order dated 28.1.1997 passed by this court in the wr it petition is without any basis; that originally the petitioner has envisaged a contribution of Rs.12.14 crores after seeing the third respondent's contribution of Rs.14.14 crores and submitted a fresh proposal raising to Rs.23.75 crores; that the first respondent has correctly gone into the issue as to means or resourcefulness of the parties to generate the equity proposed to be brought in; that in a well reasoned order the proposal of the petitioner was rejected as a weak team to take over the valuable assets of Sri Hari Mills at a throw away price and found not worthy for consideration; that the allegation that the petitioner is capable of inducting the amount of Rs.23.75 crores which was made only in their updated proposal submitted in September 1997 is rightly rejected by the first respondent; that the evidence deposed by the union leaders with the fourth respondent who has successfully rehabilitated/ revived the Bhavani Mills Limited; the track record of the petitioner in implementing the rehabilitating/reviving the Bhavani Mill would speak the total incapacity to run any textile mills; that the third respondent would strictly satisfy and they have better credentials and proven track record to support their claim for satisfying the parameters than the petitioner; that Lord Krishna Bank has a charge over the properties of petitioner for more than ten crores and even full sale is put through, no money will be realised; that the first respondent has rightly concluded that neither the third respondent nor the petitioner has established their capability to raise adequate resources in order to implement their respective rehabilitation proposals and ultimately come to the conclusion that adequate

resources can be raised from the disposal of land, buildings and machinery of B mill, closure of which has been upheld by the Special Industrial Tribunal and direction was issued to the operating agency to prepare a rehabilitation scheme for the third respondent Mills on the basis of sale of assets of B mill is perfectly valid and prayed for dismissal of the writ petitions.

The learned Senior Counsel appearing for the third respondent has relied on the following judgments:-
(i) BOARD OPINION v. RAJPRAKASH SPINNING MILLS LTD.((2000) 102 CC 296). In this case both the Board and the appellate authority recommended for winding up of the company as it was unable for the company to pay the dues to the secured creditors and the workers within a reasonable time. It was held that the secured creditors and the workers have a right to make a submission when the court is considering the question whether the opinion of the BIFR and AAIFR should be accepted or not. Following the decision of a Division Bench in the case of GUJARAT TRADE UNION MANCH v. GSTC reported in (2000) 99 CC 461, it was held by the learned Single Judge that BIFR is that of an expert Body. Ordinarily decision of such a Body is not interfered with unless it is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision.
(ii) GUJARAT TRADE UNION MANCH v. GSTC ((2000) 99 CC 461). In this case, a Division Bench of Gujarat High Court has held that the decision of the Board is that of expert Body and ordinarily a decision of such a Body is not interfered unless it is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision and ultimately dismissed the writ petition holding that it was not a fit case for interference.

(iii) A.R.C. CEMENT LTD. v. A.A.I.F.R. ((1999) 97 CC 459). In this case, BIFR found that revival is not viable and recommended for winding up of the company. The court held that it will not interfere with the said finding. It was held that the statutory functionaries under the Act have to function within limitations and that within the frame work of the law and equity in law is always a consideration even while interpreting any statute, but where equities are in contradiction of the law or force the authority to go beyond the law, no relief in such equity could be granted. Ultimately , the court held that the court will not sit in judgment nor scrutinise the figures just to find holes in the inferences drawn by the BIFR and AAIFR.

(iv) B.P.M.E.L.S. UNION v. APPELLATE AUTHORITY ((1999) 96 CC 398). In this case, the Calcutta High Court held that sec.20 sub clause 2 of the Sick Industrial Companies (Special Provisions) Act, 1985 amply confers power on the High Court to go into the correctness of the opinion submitted by the BIFR for considering the winding up of the company and to decide as to whether it should proceed with the winding up of the company or not in accordance with the provisions of the Companies Act, 1956. In this case, the learned Single held that the writ court would not interfere with the concurrent opinion expressed by the Board as well as the appellate authority; the question whether the company could be revived was a finding of fact which could not be interfered with by the writ court until and unless it could be show that such a finding of fact was perverse or that no prudent man could arrive at such a finding of fact on the materials on record and arrived at the conclusion that

under Article 226 of the Constitution of India, writ is a discretionary remedy and the facts disclosed in that application would not warrant the writ court to exercise such a discretion.

(v) J.M.MALHOTRA v. UNION OF INDIA ((1997 89 CC 600). In this case, a Division Bench of this court has elaborately discussed the scope of sec.20 of the Act, considered the objects, reasons and arrangements of the Act and has held that the Board consists of persons who are experts in the field that it is presided over by a person who has been or is qualified to be a judge of the High Court and it has to record its opinion with reasons after considering all the relevant facts and circumstances and after hearing all the concerned parties. The Board, while acting under sec.20, acts as a judicial body. There is no scope for the Board to act arbitrarily and adopt different procedures and apply different modes or norms.

(vi) K.SITARAMA RAJU v. B.I.F.R. ((1996) 87 CC 22). In this case a Reference was made by the Board of Directors of the sick industrial company, BIFR, after holding enquiry under sec.16 of the Act, suggested a package to make its net worth positive within a reasonable time by order dated 30.10.1990, the company could not revive itself. Hence, the second order dated 23.2.1995 was passed by the BIFR reviewing its order and appointing operating agency for framing a scheme under sec.18 of the Act. While doing so, BIFR directed the company not to bring about any change in the management. Inspite of the directions issued by the BIFR, the share holders called for an Extra-ordinary General Body Meeting for the purpose of electing Managing Director and in fact election was held on 16.5.1995 and one person was elected as Managing Director. The BIFR passed order stating that those responsible for contravening its order would be liable for action which was challenged in the writ petition. The High Court held that BIFR, while determining whether a company is a sick company does not exercise any judicial or quasi-judicial powers, but it lays down the rules of conduct for the future and it does not purport to ascertain and enforce the existing rights. In other words, BIFR exercises only administrative function of ascertaining the sickness of the company and framing of a scheme for the purpose of its revival. Section 18 of the Act comes into existence only when a scheme is framed. Before a scheme is framed, the question of exercising incidental, consequential or supplemental powers under sec.18(1)(f) does not arise. The writ petition was allowed and ultimately, the order passed by the BIFR was set aside as outside the scope of sections 15, 16 and 17 of the Act.

(vii) HARI VISHNU v. AHMAD ISHAQUE (AIR 1955 SC 233). This judgment was relied on by the learned Senior Counsel for the third respondent to the limited extent with regard to the correctness and scope of the writ of certiorari and the condition under which it could be issued. In this case, a Constitutional Bench, consisting seven Honourable Judges of the Honourable Apex Court, following the decisions reported in AIR 1952 SC 192 and AIR 1952 SC 179 has held that certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it; when a court or Tribunal acts illegally in exercise of its undoubted jurisdiction, as when it decides without giving an opportunities to the parties to be heard, or violates the

principles of natural justice; the High Court while issuing certiorari acts in exercise of a supervisory and not appellate jurisdiction. It means the court will not review the finding of fact reached by the inferior court or Tribunal even if they be erroneous; when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari.

(viii) VEERAPPA V. RAMAN AND RAMAN LTD. (AIR 1952 SC 192). In this case, a Constitutional Bench of the Honourable Supreme Court has held that writs referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, etc., however extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

(ix) PARRY & CO. LTD., v. C.E. ASSOCIATION (AIR 1952 SC 179). In this case a Full Bench the Honourable Apex Court, consisting of three Honourable Judges, has held that an inferior Tribunal vested with the power to exercise judicial or quasi-judicial might have come to an erroneous conclusion, but, where the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Tribunal and does not relate to anything collateral an erroneous decision upon which might affect his jurisdiction, and where records of the case do not disclose any error apparent on the fact of the proceeding or any irregularity in the procedure adopted by the Tribunal which goes contrary to the principles of natural justice, there are absolutely no grounds which would justify a superior court in issuing a writ of certiorari.

4. Learned counsel appearing for the 5th respondent submits that a direction may be issued to the rival parties to deposit atleast 50% of the outstanding amount as one time settlement within a stipulated time. It is also submitted by the learned counsel that due to the prolonged litigation between the rival parties and pendency of the matter, the secured creditors are unable to recover their dues and in view of the delay, the value of the plan and machinery of the mill is reduced that even if the secured creditors have dispose of the properties at the present time, it is unlikely to fetch substantial amount.

5. 13th respondent/Tamil Nadu Electricity Board filed counter contending that the Tamil Nadu Electricity Board was liable to pay Rs.3.25 crores by way of refund is incorrect.

6. Learned Senior Counsel Mr.Chandru appearing for the respondents 1 5 and 16 submits that all labour unions aggrieved by the order of the second respondent has filed appeal before the first respondent; that closure of B mill was approved by the Special Industrial Tribunal with the condition to accommodate all the employees of B Mill in A mill. The learned counsel further pointed out that the litigation is for the past ten years with the

result the workers are put in great hardship and irreparable loss; that some of the workers in the B mill died; that the petitioner has no locus standi to file the writ petition challenging the order passed by the AAIFR. The learned counsel has relied on the decision of the Honourable Supreme Court in NAVNIT R. KAMANI V. R.R.KAMANI (AIR 1989 SC 9) wherein in para 12 it has been held that

"The Act itself has been enacted in order to evolve a speedy and efficient machinery so that a sick industry could be revived with utmost expedition, production could be started, locked up funds could be utilised for furthering socio-economic development. And so that the unemployment of starving workers could be ended before they are starved to death and they are provided with employment to enable them to ' live' with dignity instead of 'existing' in humiliating conditions."

7. Learned Central Government Standing Counsel Mr.K.Gunasekar appearing for the tenth respondent submitted that the third respondent company is liable to pay a sum of Rs.97,83,091/= towards the arrears of contribution. He also relied upon the following decisions:-

(i) SARVARAYA TEXTILES LTD. v. COMMISSIONER (2001 FJR 99). In this case, it has been held by the Andhra Pradesh High Court that sec.22 of the Sick Industrial Companies (Special Provisions) Act, 1985 would not confer immunity to the petitioner and the court would not interfere with the attachment proceedings taken by the respondent authorities for recovery of the contributions which the petitioner had deducted from the wages of the employees but had not paid to the Fund.

(ii) UNIVERSAL PAPER MILLS LTD. v. R.P.F. COMMISSIONER (2000 II LLJ 1 193). In this case it has been held that the bar of proceedings against sick company is not applicable to statutory liabilities under E.P.F. Act.

It seems that the third respondent company was liable to pay certain amount to the tenth respondent. The tenth respondent has been cited as the respondent in the writ petition. Though it was brought to the notice of this court that the third respondent was in arrears of amount, no relief is sought against the third respondent in these writ petitions. Moreover, the tenth respondent was not a party either before the second respondent or the first respondent.

8. Learned counsel Mr.O.Venkatachalam appearing for the 18th respondent submitted that the order of the first respondent rejecting the proposal of the third respondent as well as the petitioner is just, proper and valid, however, the sale of assets of B mill is not justified. The learned counsel submitted that if the vacant site adjacent to the B mill is sold, it would fetch several crores of rupees out of that sale proceeds, the dues of workers, the loan of secured and unsecured creditors could be discharged and by using the remaining sale proceeds, B mill could be revived and prayed for dismissal of the writ petitions. Though the learned counsel submitted that

against the order passed by the Industrial Tribunal directing closure of B Mill, a writ petition has been filed which was dismissed by this court, as against the said dismissal order, an appeal has been preferred, since interim order prayed for by this respondent was also turned out by the Division Bench. Hence, I have not taken into consideration of the issue which has alien to the subject matter of these writ petitions.

9. Now we will look into the scheme of the Sick Industrial Companies (Special Provisions) Act, 1985.

Under sec.3(ga) net worth has been defined as the sum total of the paid up capital and free reserves. Free reserves means all reserves credits out of the profits and share premium account, but, does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation.

Under sec.3(o) Sick Industrial Company is defined as an Industrial Company which has at the end of financial year accumulated losses equal to or exceeding its entire net worth. In sec.13 Procedure of Board and appellate authority are contemplated.

Under sec.13(2) powers of the Board, or, as the case may be, the appellate authority shall include the power to determine the extent to which the persons interested are claiming to be interested.

Sec.14 describes that proceedings of the Board or appellate authority shall be deemed to be a Civil Court and the proceedings shall be deemed to be a judicial proceeding.

Sec.17(1) empowers that if the Board is satisfied that the company has become a sick industrial company it shall decide as soon as may be by order in writing, whether is practicable for the company to make its net worth exceeded the accumulated loss within a reasonable time.

sub section 2 of sec.17 says that if the Board decides under sub-sec.1 of sec.17 that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses, then a reasonable time the Board shall by order in writing subject to such restrictions or conditions as may be specified in the order give such time to the company as it may deem fit.

Under sub sec.3 of sec.17, it is stated that if the Board decides that it is not practicable for a sick industrial company to make its net worth exceed the accumulated loss within a reasonable time and that it is necessary and expedient in the public interest to adopt all or any of the measures specified in sec.18.

Sec.18(1) contemplates that where an order is made under sub sec.3 of sec.17 in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of 90 days from the date of such order, a scheme providing for any one or more of the available measures viz., (a) the financial re-construction of

the sick industrial company (b) change in or take over of the management (c) amalgamation of sick industrial company with any other company or any other company with the sick industrial company (d) sale or lease of a part or whole of any industrial undertakings of the sick industrial company.

Sec.20 contemplates that the Board can after enquiry opine that the sick industrial company is not likely to make its net worth exceed the accumulated loss within reasonable time, it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court. The concerned High Court on the basis of the opinion, order winding up of the sick industrial company or may proceed and cause to proceed with the winding up.
Sec.21 contemplates that the operating agency has to prepare a complete inventory of assets and liabilities of whatever nature, estimate of reserve price, lease rent or share exchange ratio, etc.

Sec.22 says that when an enquiry under sec.16 is pending against any company or any scheme referred to under sec.17 is under preparation or consideration or a sanction scheme is under implementation or when an appeal under sec.25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company etc., shall lie or to be proceeded with further except with the consent of the Board or as the case may be the appellate authority.

Sec.25 speaks about the appeal. Any person aggrieved by the order of the Board under the Act may within 45 days prefer an appeal to the appellate authority.

Sec.25(2) contemplates that on receipt of an appeal, the appellate authority may, after giving opportunity to the appellant to be heard, if he so desires and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against or remand the matter to the Board for fresh consideration.
10. In the light of the arguments of the learned counsel on both sides and scheme of the Act, I proceed to analyse the case.

The first respondent has framed the below mentioned three issues:-

(i) Is Petitioner's proposal better than that of the third respondent as concluded by the second respondent? (ii) Have the petitioner and the third respondent established their resourcefulness for implementing their respective proposals? (iii) What is the most viable, workable alternative for the rehabilitation of the third respondent Mills?

The proposals of the Petitioner and the third respondent are as mentioned below:-
COST OF SCHEME (Rs. in lakhs)

Purpose	Existing promoters & Co-promoters Aug'97/Sept'97	Cheran Group Aug'97	Sept'97
OTS	1196.00	1027.12	1170.00
Labour Dues	284.00	260.00	410.00
Capital Expenditure	184.00	150.00	425.00
Statutory dues	65.00	147.00	147.00
Electricity dues	39.00	38.50	38.00
Working Capital Margin	171.00	100.00	350.00
Reopening expenses	10.00	-	-
Pressing creditors	-	160.46	160.00
Unsecured loans	-	93.00	-
	1949.00	1976.06	2700.00

The Petitioner has enhanced the amount in respect of OTS, Labour dues, Capital expenditure and working capital margin in their revised proposals.

11. With regard to OTS dues, the secured creditors namely IIBI, IDBI, ICICI and SBI, the third respondent has offered Rs.11.96 crores i. e., 30% of principal and funded interest on or before 30 days from the date of acceptance by the second respondent and the balance on or before six months from the date of sanction. The petitioner has offered Rs.11.70 crores i.e., 25% within 60 days of the sanction and the remaining 75% in 180 days. The total dues of secured creditors inclusive of simple interest, compound interest, penal interest and other charges upto 30.09.1997 amounting to Rs.11.78 crores and interest for further period from 01.10.1997 was payable. The petitioner has sought for waiver of penal interest. The first respondent has pointed out that the secured creditors were not prepared for waiver of the same. Even before this court, they have not agreed for the said waiver. On proper consideration, the first respondent has rightly concluded that the third respondent's proposal is slightly better and the conclusion arrived at by the second respondent in this regard is erroneous.

12. In respect of labour dues, the third respondent offered Rs.2.84 crores but the petitioner has offered Rs.4.10 crores in their revised proposal, which is inclusive of Rs.1.50 crores for voluntary retirement scheme. The labour unions are not willing for the VRS scheme. Moreover, the Industrial Tribunal has approved the closure of the B mill with the condition to engage the service of the workers of B Mill in A Mill. The third respondent's proposal was based on continuously availing the service of B mill workers. Hence, the first respondent has rightly found that the third respondent's proposal is better.

13. As far as the capital expenditure is concerned, the third respondent's proposal envisages Rs.1.84 crores, the petitioner's enhanced proposal offers Rs.4.25 crores, which is inclusive of installation of some equipments. The first respondent held that the petitioner's proposal in this regard is technically justifiable and better.

14. With regard to statutory dues, the third respondent's proposal includes upfront payment of Rs.65 lakhs out of the total of Rs.302 lakhs, but the petitioner's proposal envisages all the payment spread over three years. The first respondent has rightly held that both the proposals are misleading.

15. In respect of working capital margin, the third respondent has made provisions of Rs.1.71 crores but the petitioner in its revised proposal envisaged Rs.3.50 crores. Hence, the first respondent has found that the petitioner's proposal in this regard is better.

16. In respect of re-opening expenses, the third respondent offered Rs.10 lakhs, but nothing has been offered by the petitioner. As the third respondent has already incurred the said expenses, it was found satisfactory to this Court also.

17. The first respondent has pointed out that the petitioner, after became aware of the third respondent's proposal gave a revised proposal with improved figures. Despite the said fact, the proposal with regard to OTS to secured creditors and payment of workers dues and statutory dues are concerned, the third respondent's proposal is rightly found by the first respondent as better. With regard to capital expenditure and working capital margin, the proposal is better than their own proposal submitted in August 1997 by the petitioner. On careful comparision of the figures and analysing the same in depth, the first respondent has concluded that the petitioner's proposal is not better than the proposal of the third respondent and answered the issue against the petitioner.

18. The second issue whether the petitioner and third respondent establish their resourcefulness for implementing their respective proposals is concerned, the capability of both the parties were analysed by the first respondent. Indeed, the second respondent has failed to do the same. It is evident that the 3rd respondent in his proposal offered a contribution of Rs.14.14 crores as equity; whereas, the petitioner offered promoters contribution of Rs.12.41 crores which was revised to Rs.23.75 crores. The third respondent expressed their inability in infusion of funds. They depend upon the co-promoter namely Jaganathan Associates. An amount of Rs.5.30 crores is said to have expected from sale of surplus lands of Bhavani Mills Limited and Bungalow owned by Mr. Jaganathan. The first respondent has pointed out that the lands of Bhavani Mills Limited was already hypothicated to secured creditors, besides that the sale agreement of it are of doubtful value. An amount of Rs.3.25 crores is shown as refund from Tamil Nadu Electricity Board to Bhavani Mills Limited, but the said mill is entitled to adjustment of certain amounts in future bills as ordered by the Civil court. The third respondent has also stated that the said Jaganathan Associates has already brought in Rs.98 lakhs towards payment of dues of the workers,

purchase of stores etc., which were also certified by Chartered Accountants. The said single act of the Jaganathan Associates is not sufficient to establish the resourcefulness. Considering all these materials, the first respondent has held that the third respondent is not able to show reliable sources of funds from his promoters or co-promoters and Associates to raise Rs.14.14 crores. The first respondent has also taken into consideration the amount of Rs.23.75 crores shown by the petitioner from sale of office space to Hindustan Petroleum Limited, but it is seen from the records placed before it that no such office space has been constructed at all. There was a proposal of purchase of land by Hindustan Petroleum Limited from the group company of petitioner namely M/s. United Builders and Consultants which was given up later because of the pending litigation. It is also pointed out by the first respondent that though the petitioner has stated that Rs.11.36 crores could be mobilised from the sale of office space to Lord Krishna Bank, RPG Cellular and New India Assurance Company, but the records produced shows that Lord Krishna Bank has dropped the idea, New India Assurance Company did not finalise it and RPG Cellulars also given up their proposal. The first respondent has also taken notice of their own order dated 23-07-1997 in Appeal No. 39 of 1997 filed by the petitioner in the case of Srihari Mills Limited wherein it is submitted that a rehabilitation proposal envisaging a total cost of Rs.6.17 crores. In the said case, BIFR has directed all the interested parties to deposit Rs.80 lakhs in a no-lien interest bearing account to show their financial capability. The petitioner herein has sought extension of time for making deposit on the ground that it had already blocked its funds to the extent of Rs.5 crores in connection with the rehabilitation of other sick companies, however, failed to make deposit. The first respondent also concluded in the said order that the proposals of the petitioner in the nature of weak attempts to take over valuable assets of Srihari Mills Limited at a throw away price and were therefore not worthy of consideration. Consolidating all these aspects, the first respondent has concluded that both the parties are incapable of raising resources for rehabilitation and answered against the petitioner as well as the third respondent.

19. Since the first respondent has arrived at a conclusion that the petitioner as well as the third respondent are incapable of carrying out the proposal of rehabilitation it suggested for viable, workable and alternative for the rehabilitation hird respondent mill. It found that adequate resources can be raised from the disposal of land, buildings and machinery of B mill, closure of which has been approved by the Special Industrial Tribunal and if necessary, a part of the surplus land of A mill can also be sold in order to discharge all financial obligations in full and also have some additional fund for renovation /replacement /modernisation/expansion of spinning operations of A mill so that all the workers of the B mill other than those retired/resigned can be employed without retrenchment. This issue is also properly analysed and answered by the first respondent.

20. The preamble Sick Industrial Companies (Special Provisions) Act, 1985 highlights the object of the Act. It has been made in public interest with a view to securing the timely detection of sick and potentially sick companies owning Industrial undertakings, the speedy determination by a board of experts of the preventive, ameliorative, remedial and other measures

which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

21. Under Section 17 (3) of the Act, the Board decides under Section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is necessary or expedient in the public interest adopt all or any of the measures specified in Section 18 in relation to the said company it may at earliest by order in writing direct any operating agency specified in the order to prepare having regard to such guidelines as may be specified in the order, a scheme. Under Section 18 (1), where an order is made under sub-section 3 of section 17, the Operating Agency shall prepare as expeditiously as possible and ordinarily within a period of 90 days from the date of such order a scheme suggesting for any one or more of the following measures. (a) The financial re-construction of the Sick Industrial Company(b) For appropriate management by change in or take over of the management (c) Amalgamation of Sick Industry with any other company or any other company with Sick industrial company etc., (d) The sale or lease of a part or whole of any industrial undertaking of the sick industrial company (d)(a) The rationalisation of managerial personnel, supervisory staff and workmen in accordance with law (e) Such other preventive, ameliorative and remedial measures as may be provided (f) Such incidential, consequential or supplement measures as may be necessary or expedient in connection with or for purposes of the measures specified in clause (a) to (e). The first respondent has rightly ordered sale of B mill in terms of Section 18 (1) (d) of the Act.

22. An argument was advanced by the counsel for the third respondent that the 2nd respondent ought to have made an order directing the Operating Agency to prepare a scheme and then call for proposals from outsiders, but straightaway called for proposal by advertisement contrary to the provisions of Section 17 (3) of the Act. It is submitted on behalf of the petitioner that all the controversies prevailed prior to the order dated 28-01-1997 in WP No. 12073 of 1995 has come to an end as no appeal has been filed against the said order and the scope of litigation revolves on that order to an extent that fresh/ updated proposals be called for by Operating Agency and submit a report. The petitioner would say that once their proposal is accepted as better than the third respondent and DRS dated 13-11-1997 made by the Operating Agency, the scope of the appeal under Section 25 is not available to the third respondent. The said argument, in my considered view is without any substance. The order passed in the writ petition does not prevent either the 2nd respondent or the first respondent in scrutinising the proposal and pass their own orders.

23. The 2nd respondent directed the Operating Agency to prepare a DRS on the basis of petitioner's proposal and suitably reflect the funding for the scheme as well as fully tied-up means of finance after verification. As rightly pointed out by the 1st respondent that 2nd respondent ought to have verified the resourcefulness prior to the said direction to Operating Agency. The 2nd respondent has passed an erroneous order contrary to the Act. The first respondent has rightly framed the issues based on the pleadings of the parties which were already raised before the 2nd respondent and given its

finding after considering the material evidence in depth. While deciding the old issues by the appellate authority and the parties were also aware of the same, the question of affording fresh opportunity does not arise.

24. Under Section 25 of the Act as well as under Order XIV Rule 5 CPC, the appellate authority namely the first respondent has framed the said issue as it thought fit for determining the matters in controversy. The 2nd respondent was fascinated by the escalated figures of the petitioner passed its order without affording opportunity to the financial institutions, Unions and the third respondent, as rightly pointed out by the first respondent. The order passed in W.P. No. 1207 3 of 1995 by this Court does not fetter the hands of the first respondent in exercising its jurisdiction under Section 25 of the Act.

25. The petitioner herein has misconstrued the provisions of the Act. It is not the duty of the BIFR or AAIFR to decide the lis between the parties who submitted the proposal. The Act has been enacted on the recommendation of the President under Article 117 (1) r/w. 274 (1) of the Constitution of India keeping in mind the ill effects of sickness in Industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and Society at large. This Act has been enacted with the object of affording maximum protection of employment, optimise the use of financial resources, salvaging the assets of production, realising the amounts due to the banks, financial institution to replace the existing time consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts. The order passed by the first respondent in setting aside the order of the 2nd respondent is well within its purview. The first respondent directed the Operating Agency to prepare a revival scheme on the basis of sale of assets and sale shall be organised by a committee to be set up by the 2nd respondent and the committee shall consist of representatives of Operating Agency, Financial Institutions, SBI and the State Government Revenue Department.

26. Both BIFR and AAIFR are expert body created by statute and they have to function within their limitation and within the framework of law, however BIFR and AAIFR shall not act arbitrarily and adopt different procedures and different modes or norms other than what is provided in the Act. I am of the view that the order passed by the 1st respondent is well within its jurisdiction and within the frame work of law, besides that the findings of the 1st respondent are relating to facts, hence the High Court will not review the findings of facts when the act does not confer a right of appeal against the decision. When the first respondent reaches the conclusion within its jurisdiction, High Court is not justified in issuing a writ of certiorari. Writ of certiorari can be issued only when BIFR or AAIFR acts without jurisdiction.

27. As I have already held that the order passed by the first respondent is within its jurisdiction based on material evidence, no interference is required. Hence, all the writ petitions are dismissed. No

costs. Since this litigation is prolonging for the past eight years, financial institutions, employees and others are put to great hardship. Hence, in the interest of justice, I direct the BIFR and Operating Agency to implement the order passed by the first respondent within a period of six months from today.

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Index: Yes
Internet: Yes

To
1. Appellate Authority for Industrial
and Financial Re-construction,
10th Floor, Jeevan Prakash,
25, Kasturba Gandhi Marg,
New Delhi 110 001.

2. Board for Industrial and Financial
Re-construction,
22nd Floor, Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
New Delhi 110 001.

3. Employees State Insurance Corporation,
ESIC Building, Kotla Road,
Behind Foreign Post Office,
New Delhi.

4. Central Provident Fund Commissioner,
Hudco Vishala,
14, Bhikaji Cama Place,
New Delhi 110 066.

5. The Secretary to Government,
Handloom, Handicraft
Textiles & Khadi Department,
Fort St. George, Chennai 600 009.

6. The Secretary,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 600 002.

7. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

8. The Secretary to Government,

Industries Department,
Fort St. George,